

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GARY DIAZ,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., INC., *et al.*

Defendants.

2:11-cv-1219-KJD-CWH

**FINDINGS AND
RECOMMENDATION**

Plaintiff submitted an Application to Proceed *in Forma Pauperis* (#1) and a Complaint on October 4, 2011.

Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action “without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefore.” 28 U.S.C. § 1915(a). The Court reviewed Plaintiff’s financial affidavit and determined that Plaintiff does not satisfy the indigency requirement of 28 U.S.C. § 1915(a)(1) and that Plaintiff is able to pay the costs of commencing this action. *See* Dkt. No. 3. The Court ordered Plaintiff to pay the filing fee within thirty days of December 22, 2011. Plaintiff was notified that failure to comply with the Order would result in the Court recommending dismissal of the action.

More than thirty days have elapsed since the Court’s Order denying Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* and Plaintiff has not submitted the filing fee in this case.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Plaintiff’s Complaint (#1-1) be **dismissed with prejudice** because Plaintiff failed to pay the filing fee within 30 days of the Court’s December 22, 2011 Order.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

Dated this 24th day of January, 2012.



C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE